United Nations A/70/259

General Assembly

Distr.: General
3 August 2015

Original: English

Seventieth session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights, including ways and means to promote the human rights of migrants

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 69/167 on the protection of migrants. In that resolution, the Assembly requested the Secretary-General to submit to it, at its seventieth session, a report on the implementation of the resolution.

A note verbale was sent from the Office of the United Nations High Commissioner for Human Rights on behalf of the Secretary-General requesting relevant information and highlighting the challenges and best practices in promoting and protecting the human rights of migrant domestic workers, regardless of their migration status. Written submissions were received from States, intergovernmental organizations and non-governmental organizations.

The present report contains an analysis of the ways and means to promote and protect the human rights of migrants, with a focus on the human rights challenges faced by migrant domestic workers. The report contains a discussion of some key elements of a human rights-based approach to migration and domestic work and recommendations on promoting and protecting the human rights of migrant domestic workers.

* A/70/150.

15-12503 (E) 030915

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I. Introduction

1. In its resolution 69/167, the General Assembly reaffirmed the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their migration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and invited Member States to consider ratifying relevant conventions of the International Labour Organization (ILO), including Convention No. 189 on decent work for domestic workers. In the same resolution, the Assembly also emphasized the importance of protecting persons in vulnerable situations and called upon States to provide for the protection of the human rights of women migrant workers, to promote fair labour conditions, and ensure that all women, including care workers, are legally protected against violence and exploitation and to protect the human rights of migrant children, given their vulnerability.

2. Written submissions were received from States and intergovernmental and non-governmental organizations in response to a note verbale from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Secretary-General requesting information on the implementation of resolution 69/167.[1]

3. The present report focuses on the human rights challenges faced by migrant domestic workers (sect. II); examines some key elements of a human rights-based approach to migration and domestic work (sect. III); and contains recommendations on promoting and protecting the human rights of migrant domestic workers (sect. IV).

II. Promotion and protection of the human rights of migrant domestic workers

4. Worldwide, at least 52.6 million people are engaged as domestic workers.[2] Although these women, men and children carry out a wide variety of essential tasks, including cleaning, ironing, gardening, cooking, driving and caring for children and the elderly in private households, what they do is not always considered work. Their contributions to the country in which they live and work are often unrecognized, and their living and working conditions are sometimes exploitative.

5. Migrants make up a substantial proportion of all domestic workers. Irregular migrants in engaged domestic work are at a particularly high risk of being exploited

[1] The text of most of the submissions received are available from www.ohchr.org/EN/Issues/Migration/Pages/ProtectionofMigrantsreport.aspx. References to the practices of States in this report are drawn mainly from these submissions. Any reference to the practice of an individual State is provided as an illustrative example only and does not reflect an exhaustive analysis of State practice.

[2] This estimate is deliberately conservative. The true number is likely to be close to 100 million (see ILO, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (ILO, 2013).

and ill-treated. They can be denied their dignity as human beings and are often unable to access essential services.[3]

6. In recent years, international migration patterns have changed significantly. International migrants tend to move within, rather than between, major regions. Migration within the South has become as significant as that from South to North. Migration takes myriad forms and, either temporarily or for long periods, migrants may become domestic workers at some point on their journey.

7. Globally, men and women migrate in more or less equal numbers, and 48 per cent of international migrants are women.[4] However, international migration varies by occupation and location according to gender. In Italy, for example, 85 per cent of the immigrants from Cape Verde are women, most of whom work as domestic workers, whereas 96 per cent of immigrants from Senegal are men, most of whom work as street vendors.[5] Worldwide, 7.5 per cent of all employed women are domestic workers. In the Middle East, 31.8 per cent of all employed women are domestic workers.[6]

8. Domestic work is traditionally done mostly by women, and it is still regarded as women's work that does not require qualifications. Most domestic workers (83%) in all countries are women. In Uruguay, for example, more than 99 per cent of all domestic workers are women. Although domestic work has evolved and become more professionalized in some regions, women continue to dominate the sector, and in some regions up to 90 per cent of migrant domestic workers are women.[7] It is estimated that, in total, 17 to 25 million women migrants work in the domestic service sector.[8] ILO has suggested that women are migrating in greater numbers in response to the demand for domestic work.[9]

9. The tasks involved in domestic work (cleaning, ironing, cooking and caring for children or the elderly) are regarded by some as degrading. Women migrants who work as domestic workers are not always considered as workers with human rights; sometimes they are viewed as helpers, or even family members, who are dependent on charity. In practice, the generalized perception that domestic work is women's work increases the vulnerability of these women.

10. The most recent estimates available indicate that, worldwide, over 15.5 million children between 5 and 17 years of age are engaged in domestic work, and that

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[3] Migrants in an irregular situation are persons who are not authorized to enter, stay or engage in a remunerated activity in a transit or destination country. See: United Nations and OHCHR, *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation* (New York and Geneva, 2014).

[4] See Department of Economic and Social Affairs, Population Division, "International Migration Report 2013", 2013.

[5] See Hein de Haas, *The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union* (International Migration Institute, 2007).

[6] See ILO, *Domestic Workers across the World*.

[7] See Victor Tokman, *Domestic Workers in Latin America: Statistics for New Policies*, Women in Informal Employment: Globalizing and Organizing Working Paper No. 17 (Cambridge, June 2010).

[8] See International Domestic Workers' Network, "Domestic workers worldwide: summary of available statistical data and estimates", June 2010.

[9] ILO, "Global Action Programme on Migrant Domestic Workers and their Families" (available from www.ilo.org/migrant/capacity-building-and-technical-assistance-on-labour-migration/projects/WCMS_222567/lang--en/index.htm).

73 per cent of them are girls and that half are under the international minimum working age of 15.[10] When they work as domestic workers, children are vulnerable to a whole range of human rights violations and abuses; however, because they are children, these violations and abuses assume particular gravity. Child domestic workers may be exposed to dangerous products or made to undertake dangerous tasks, and they are very likely to be victims of forced labour practices and slavery.

11. Across all regions, the proportion of domestic workers who are migrants has steadily increased in recent decades. To illustrate this, in the first half of 2012 alone, 160,000 Ethiopians were reported to have migrated to Saudi Arabia to work in the domestic sector.[11] Information provided in 2010 by the Organization for Economic Cooperation and Development estimated that 47 per cent of international migrants in Africa are women, many of whom are engaged in the domestic sector.[12] Nearly half of all Indonesian migrants and a third of all Filipino migrants are domestic workers, of whom 87.5 per cent and 93.9 per cent, respectively, are women.[13] Saudi Arabia employs an estimated 1.5 million domestic workers, primarily from Indonesia, the Philippines and Sri Lanka.[14] In Argentina, Chile and Costa Rica, respectively, 39.3 per cent, 37.1 per cent and 47.1 per cent of women migrants are employed in domestic services.[7] In South Africa, it was reported that more than one million domestic workers were employed in 2007 (75% of whom were women). The actual number is far larger, because many irregular migrants work in the sector.[15] In New York State in the United States of America, 99 per cent of domestic workers are foreign-born and 93 per cent are female.[16] In the European Union, a large number of domestic workers are migrants, a proportion of whom work irregularly. Between 2002 and 2011, Italy and Spain regularized the status of some 500,000 irregular third-country nationals employed in domestic work.[17] Italy has over 1.2 million domestic workers, most of whom are migrant women. In France, over 50 per cent of migrant women are employed in domestic work.[16]

12. Migration for domestic work is often triggered by demand in countries of employment. For example, in countries with an ageing population there is a rising demand for care workers, which is not always met by nationals. It is estimated that

[10] See ILO and the International Programme on the Elimination of Child Labour, *Ending Child Labour in Domestic Work and Protecting Young Workers from Abusive Working Conditions* (Geneva, ILO, 2013) (available from www.ilo.org/public/libdoc/ilo/2013/113B09_111_engl.pdf).

[11] See Regional Mixed Migration Secretariat, "Migrant smuggling in the horn of Africa and Yemen: The social economy and protection risks", 2013.

[12] See also Economic Commission for Africa, "Challenges in promoting and protecting the human rights of migrant domestic workers, regardless of their migration status" in the submission of the Economic Commission for Africa.

[13] See Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report on International Migration in East and South-East Asia* (International Organization for Migration, Bangkok, 2008).

[14] See International Trade Union Confederation, "Decent work, decent life for domestic workers", 2011.

[15] See Helen Schwenken and Lisa-Marie Heimeshoff (eds.), *Domestic workers count: Global data on an often invisible sector* (Kassel, Kassel University Press, 2011).

[16] See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the International Trade Union Confederation, "Domestic workers count too: implementing protection for domestic workers", 2013.

[17] See European Union Agency for Fundamental Rights, *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and its Member States* (Vienna, 2011).

the number of Americans in need of long-term care is expected to double from 13 to 27 million by 2050.[16] The European Union Agency for Fundamental Rights has observed that, in the European Union, the demand for caring and cleaning work, which has traditionally been performed by women and to some extent by welfare services, is increasing, and that the available country workforces cannot meet this demand alone. In practice, cleaning and caring work is in part carried out by (female) migrants with irregular status.[17]

13. Growing economies that employ more women generate demand for domestic cleaners, housekeepers and childcare, tasks that have traditionally been taken on by women. Income differentials allow families with moderate incomes to pay for domestic help at rates that still attract migrants. The drivers of migration from countries of origin are diverse, including social, financial, environmental and cultural stresses, unemployment, conflict, domestic violence, family concerns, personal ambitions and opportunities that vary from one individual to another, including by gender. In some cases, women migrants find that, in countries of transit and destination, domestic work is the only employment available to them.

A. Framework of international normative standards

14. Under the international human rights framework, all migrants, including migrant domestic workers, are entitled to all fundamental human rights, regardless of their migration status.

15. The fundamental principle of non-discrimination in international human rights law requires that any difference in treatment (between nationals and non-nationals or between different groups of non-nationals) must serve a legitimate objective, and that any course of action that States take to attain such an objective must be proportionate and reasonable.[18]

16. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in its general comment No. 1 on migrant domestic workers, highlighted the main challenges faced in law and in practice by migrant domestic workers. The Committee noted:

> Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability is isolation and dependence, which can include the following elements: the isolation of life in a foreign land and often in a foreign language, far away from family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work. Women migrant domestic workers face additional risks related to their gender, including gender-based violence. These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, not

[18] See *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*.

least because they often risk deportation if they contact State authorities to seek protection from an abusive employer.[19]

17. In relation to child migrant domestic workers specifically, article 32 of the Convention on the Rights of the Child (resolution 44/25, annex) affirms the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. This right is reinforced in the Minimum Age Convention, 1973 (No. 138) of ILO and its Worst Forms of Child Labour Convention, 1999 (No. 182). Under this framework, child labour is prohibited if it interferes with the child's right to education, or if the work is likely to harm children's health or development, or if the child is under working age.

18. All relevant ILO Conventions, especially the eight fundamental Conventions,[20] the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) on migrants, address elements of protection granted to migrant workers.

19. The Domestic Workers Convention, 2011 (No. 189) of ILO, which provides specific standards on decent conditions of work for domestic workers, applies to all domestic workers, including migrants (art. 2.1), and has provisions that address the situation of migrant domestic workers. The Convention also: states that migrant domestic workers should receive, before departure, a written contract that they can understand and that is enforceable in the country of employment (art. 8); encourages States parties to collaborate to ensure the effective application of the Convention to migrant domestic workers (art. 8.3); calls on States to regulate recruitment of domestic workers by private employment agencies (art. 15) and to conclude bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in the recruitment, placement and employment of migrant domestic workers; and states that fees charged by private employment agencies should not be deducted from the remuneration of domestic workers (art. 15.1 (e)).

20. Migrant domestic workers are also covered by a number of regional instruments and mechanisms, including the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the European Social Charter, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights.

B. Human rights challenges and promising practices

21. The nature of domestic work lends itself to certain forms of abuse because it can more easily take place unnoticed, and with impunity, in private households. It is often less regulated, or not regulated at all, and human rights bodies and

[19] CMW/C/GC/1, para. 7.

[20] The eight fundamental ILO Conventions are: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); the Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

employment authorities find it difficult to monitor. In 2013, one study reported that 40 per cent of 73 countries studied worldwide had no form of regulation of any kind for domestic workers,[16] increasing the vulnerability of domestic workers to abuse.

22. In most countries, domestic employment is not subject to effective inspection precisely because the workplace is in a private home. If domestic workers are in an irregular situation, their lives may be even more clandestine because they work both undocumented and behind closed doors. This situation can be exploited by abusive employers, who may impose excessive working hours or inadequate and unfair conditions on their domestic staff and pay low salaries. In addition, live-in migrant domestic workers may be cut off from social networks, in particular if their employer limits their freedom of movement. Migrant domestic workers often do not have access to a system of social protection and are unable to benefit from health insurance, pensions and other benefits.

23. Migrants are likely to be unfamiliar with national laws and the judicial system of their country of employment, and may find it difficult to obtain information about their rights, in particular when they do not speak local languages or are in an irregular situation. Migrants are also more likely than national citizens to work in the informal economy, that is, in domestic work, which may increase their economic insecurity and isolate them from mainstream human rights protection and services. One effect is that migrants are less likely to report abuses to the authorities or to be aware of the services, including health care, social protection and legal aid, that are available to them.

24. The asymmetrical work relationship between employers and migrant workers is even more evident when migrant workers depend on their employers for work permits. In such circumstances, migrants are vulnerable not only because they have an urgent need to work and earn money, but also because they are unable to seek other jobs. Dependence lessens their bargaining power, and, as stated above, their vulnerability is increased by the fact that they may be unable to access essential public services.

1. Violations of dignity, xenophobia and violence

25. Migrant domestic workers are often treated disrespectfully and in ways that violate their dignity. Attitudes towards them may be condescending. They may be insulted, shouted at, beaten, deprived of food or drink, experience other forms of harassment or ill-treatment or psychological and physical abuse that deny them their dignity as human beings.

26. The right to privacy of migrant domestic workers is often violated. Their correspondence is opened, their telephone calls are monitored and their rooms (if, indeed, they have individual rooms) are searched without their consent.[21]

27. One study noted that demeaning or degrading treatment is a particularly insidious form of abuse. Aggressively delivered orders, shouting and constant belittling criticism contain an underlying threat of violence or may be seen as violent. Abuse may also include the withholding of food, not allowing the worker the freedom to prepare her own food and relying on "hand-outs" from the mistress of the house, which may be leftovers from the family meal. In some cases locks

[21] E/CN.4/2004/76, para. 28.

were put on refrigerators and in one case an alarm was installed. Employees may be belittled on a daily basis, including by name-calling, and sometimes names may be changed to suit the employer.[22] Media reports can also reinforce xenophobic attitudes and beliefs, such as newspaper reports that use discriminatory and insulting language about migrant women working as domestic workers.

28. In extreme cases, employers have abused their domestic employees to the point that their punishments or mental coercion amount to degrading or inhuman treatment, or even torture.

29. Undocumented women migrants are also at risk of being physically and sexually abused by officials when they are arrested, detained or deported.

2. Discrimination and gender-based abuses

30. In general, migrant women face many of the same human rights violations as migrant men, with additional risks because of their sex, including physical violence, sexual harassment and abuse. The link between domestic work, migrant women and gender-based violence has been made on several occasions, revealing that women migrant domestic workers are at great risk of exposure to physical and sexual violence.[23]

31. In some countries, pregnancy tests are mandatory before women are permitted to migrate, and pregnant women are considered unfit to work as domestic workers. Pregnancy tests are also sometimes imposed on women domestic workers in the course of their employment, causing women who are pregnant to lose their job, or to seek abortions that are unsafe, in particular in countries that criminalize abortion.

32. Women who experience or make complaints about violence and ill-treatment against them, in particular undocumented migrant women, must often overcome financial and administrative obstacles before they can access support programmes.

33. Migrant women domestic workers may have limited or no access to maternity leave, even unpaid, and may have to continue working until they give birth. During pregnancy or once their children are born, they are at risk of being dismissed and having to leave their employer's house, sometimes with nowhere to go. If they remain in service, they may be expected to work very soon after delivery. They may be asked to entrust their child to someone else or accept deductions from their pay. It can be extremely difficult for women to care for their children while continuing to work, in particular if their duties include complicated hours or night shifts. As migrants, in particular if they are irregular, they may not receive public maternal and child benefits and their children may not be able to use public child-care facilities. They may have to send their children away to live with family members or rely for support on other migrant women.

3. Abusive recruitment and bonded domestic work

34. Many migrant domestic workers are recruited through formal or informal recruitment agencies and brokers. Within these recruitment processes many can be

[22] Ray Jureidini, *Migrant Workers and Xenophobia in the Middle East* (United Nations Research Institute for Social Development, 2003) (available from http://www.unrisd.org/80256B3C005BCCF9/search/045B62F1548C9C15C1256E970031D80D?OpenDocument).

[23] See, for example, A/61/122/Add.1 and A/64/152.

deceived about the nature of the work, working conditions, pay, living conditions, the identity of their employer, the migration status they will have in the country of employment or their ability to end the working relationship and return home.

35. Abusive contracts may not strictly conform to migration rules or may mislead migrants into believing that they are fully compliant legally. Recruitment practices may also obscure the exact status of domestic workers, who may be recruited under a sponsorship programme but end up working temporarily or permanently, and irregularly, for a different employer.

36. Once migrant domestic workers arrive in their place of employment, they may find themselves in a desperate situation, with little option but to accept abusive working and living conditions in order to survive. Such situations are exacerbated when migrants find themselves in debt to the employer or the recruiter. More generally, abusive recruitment practices create, from the outset, unequal working relationships between employee and employer, which deepen a migrant domestic worker's vulnerability and frequently generate additional abuses.

4. Labour exploitation and lack of access to decent work

37. Labour exploitation of migrant domestic workers, in particular those who are in an irregular situation, is widespread. In many cases, workers may: be asked to work excessive hours without rest; not be paid, or have arbitrary sums deducted from their pay; be forced to work in hazardous and dangerous conditions; be refused sick leave or denied compensation following an accident; be dismissed without justification; have their passports confiscated; be prevented from moving about or communicating freely; or be subject to verbal, psychological, physical or sexual abuse. Such circumstances sometimes turn domestic work into a form of slavery.

38. Migrant domestic workers everywhere are commonly expected to work excessive hours. This demand is often aggravated by a refusal to pay for these hours, or to pay at a fair rate. In one study, migrant domestic workers reported working at least 15 hours a day, 7 days a week, amounting to average working weeks of more than 100 hours.[24]

39. Unfair dismissals are also a constant feature. Migrant domestic workers may be dismissed if they ask for paid sick leave, days off or a salary increase.

5. Inability to enjoy the right to health

40. Domestic work may cause specific health problems linked to domestic tasks or overwork. Where working conditions are insecure or oppressive, anxiety, depression and other mental health issues may be an issue. The health of migrant domestic workers may also be undermined if they are malnourished or exposed to unhygienic environments and living conditions.

41. Many migrant workers lack information about the health system in their country of employment and their entitlements with respect to it. Even when they are sick, migrant domestic workers may not receive care because they cannot leave the house or because their employer withholds permission and they may be obliged or

[24] See Amnesty International, "My sleep is my break: exploitation of migrant domestic workers in Qatar", 2014.

compelled to work. Following accidents, they are often denied the right to see a doctor and to receive appropriate medication or medical treatment.

42. Migrant domestic workers who experience physical or sexual abuse at the hands of their employers may be denied adequate care, and they may be denied gynaecological and obstetric care if they become pregnant. In countries where irregular migrants only have access to emergency health services, women migrant domestic workers can be excluded from sexual and reproductive health services.

43. Migrant domestic workers may also have to submit to mandatory testing for conditions such as HIV/AIDS or tuberculosis, although the justification for such screening has been questioned both from a human rights and a public health perspective. As stated above, women migrant workers may face mandatory pregnancy tests followed by deportation if the test is positive.

6. Inadequate housing, food, water and sanitation

44. Live-in migrant domestic workers are often totally dependent on their employer to provide food, water, accommodation and sanitation. Those who are abused are frequently deprived of food and water or forced to live in unsanitary conditions.

45. In its general comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights[25] argued that the right to housing should not be interpreted narrowly in terms of shelter (walls and roof), but understood to imply an entitlement to live in security, peace and dignity, with adequate privacy and adequate space (para. 7). In consequence, situations in which migrant domestic workers are forced to sleep in children's rooms, kitchens or storage rooms are abusive. Migrant domestic workers may not have space to store their personal affairs, access to sanitary equipment or opportunities to be alone. Some women migrant domestic workers are victims of physical or sexual violence because they have to share their room with other employees or cannot lock the door to their room.

46. Live-in domestic workers also face discrimination or abuse with regard to food and water. Some receive insufficient food, or food that is not in accordance with their cultural or religious values. Some women migrant domestic workers have reported that they were expected to eat the leftovers from their employer's meals. Others were not allowed to sit at the table to eat or were forced to eat on the floor. Many live-in domestic workers are not able to buy and cook their own food and therefore cannot choose how or what they eat.

7. Restrictions on freedom of movement and social and physical isolation

47. Far away from home, often without their families and often with a limited knowledge of local languages, migrant workers may suffer from stress and anxiety, which is reinforced by the challenges associated with integrating into a new society. For migrant domestic workers, networks, including informal networks based on faith or nationality, are a vital source of solidarity and information on employment, health, housing, justice and social services. In cases of grave abuse, social networks can help a migrant domestic worker to escape from her situation, and can provide

[25] Available from www.refworld.org/docid/47a7079a1.htm.

assistance afterwards. For migrant domestic workers who have little time to rest and relax, they provide vital support and friendships.

48. Employers frequently confiscate the identification papers of migrant domestic workers upon arrival, which places them in a situation of complete dependence and hampers their movement, including possible return to their country of origin without their employer's consent. Some employers also restrict their freedom of movement, refusing permission to leave the house or locking them in. Their phone calls may be monitored or they may not be allowed to own mobile phones at all.

49. One study noted of such restrictive practices:

> Employers, agents, and even Governments often defend these practices as necessary to protect the employer's household, the privacy of the family, and the personal security of the domestic worker, and to prevent workers from running away. Arbitrary denial of freedom of movement and association is abusive in its own right, and ... dramatically increases the vulnerability of domestic workers to economic exploitation, forced labour, intimidation, and sexual violence and harassment.[26]

III. Human rights-based approach to the governance of migrant domestic work

50. To ensure that all migrant domestic workers are able to live and work in safety and dignity, it is important that States implement a human rights-based regulatory framework on migration and domestic work. Human rights standards, as reflected in the core international human rights instruments, as well as principles such as participation, empowerment and accountability, should guide all stages of policymaking on migration and domestic work. The concluding section of the present report sets out some key elements of a human rights-based approach to the protection and promotion of the human rights of migrant domestic workers and provides examples of recent practices in this regard.

1. Legislative framework

51. The first step for such a human rights-based approach will often be to ensure that an adequate legislative framework is in place to provide for the protection of the human rights of migrant domestic workers.

52. According to the contribution of the Economic Commission for Africa, legislation introduced in South Africa in 2002 set out, for the first time, comprehensive standards and protections for domestic workers, including migrant domestic workers, including a minimum wage, hours of work, overtime pay, salary increases and leave entitlements. Furthermore, a labour court decision recognized that migrant domestic workers who lack a valid work permit in South Africa were fully protected by the Labour Rights Act and the Basic Conditions of Employment Act.

53. In Argentina, the Private Household Workers Contract of Employment Act has expanded the rights of workers in this sector, providing them with the same rights as

[26] See Human Rights Watch, "Swept under the rug: abuses against domestic workers around the world", 2006.

other workers, including: an 8-hour work day; weekly rest; paid annual vacation; insurance in case of occupational injuries or accidents; paid overtime; leave entitlements for marriage, the death of their spouse or family members and for maternity; and severance pay.

54. In 2006, Uruguay also recognized that domestic workers should have equal right to labour protection and social security rights, including a limit to working hours, weekly and nightly rest, minimum wages and the right to insurance benefits for unemployment and health coverage. In Uruguay, migrant domestic workers have the same rights as national domestic workers.

55. Under the Constitution of Italy, the right to health and to the highest standard of physical and mental health is guaranteed to all migrants present in the territory, including free medical care to all (art. 32) and a minimum standard of living for those who are in need (art. 38). The law forbids health-care and administrative personnel to report irregular migrants who seek to use health-care facilities to law enforcement authorities.

2. Participation

56. For isolated migrants, the ability to find support and assistance is important. The role of civil society in providing support and services such as health care and legal aid to migrant domestic workers is often crucial. Trade unions can represent migrant domestic workers in mediation procedures or labour courts and can provide support and advice if their rights are violated. The Senegalese and Mauritanian confederations of trade unions (Confédération Nationale des Travailleurs du Sénégal and Confédération Générale des Travailleurs de Mauritanie) have signed a mutual cooperation agreement to ensure that violations of migrant domestic workers' rights are followed up and supported.[27]

57. The domestic worker collective bargaining agreement in Uruguay was reached through a tripartite structure, bringing together the domestic workers union, the Uruguayan league of homeworkers and consumers, to represent employers of domestic workers in wage negotiations with the ministries of employment and social security. Among other things, the first agreement, in August 2008, provided for minimum wages and increases, severance pay, overtime and early termination payments and a ban on sexual harassment. The second agreement, in 2010, renewed the provisions of the 2008 agreement and increased the minimum wage. Both agreements were extended to the entire domestic work sector in Uruguay, including migrant workers.

58. In addition, inclusive social dialogue and tripartite consultations have been initiated, including with domestic worker organizations at all stages of the policy process. In Lebanon, a national steering committee on women migrant domestic workers comprising representatives of the Government, civil society and international organizations was established in 2006 and mandated to make proposals to better protect women migrant domestic workers.

[27] See ILO, "Protecting the rights of migrant domestic workers", 2013.

3. Partnerships

59. Human rights-based partnerships between and within States are an important way to ensure the protection and promotion of the human rights of migrant domestic workers. To uphold human rights principles, bilateral and multilateral agreements on migration for domestic work should be negotiated, devised and implemented in full accordance with human rights standards.

60. Kenya has set up a high-level ministerial group, led by the President, which has developed an action plan and guidelines on labour migration. New legislation on private recruitment agencies has also been developed to improve the enforcement of regulations regarding recruitment agencies. The country is currently involved in a bilateral dialogue with some countries of destination, with a view to protecting its nationals who migrate for domestic work.

61. The Ministry of Labour in Lebanon is currently negotiating with the embassies of Ethiopia, the Philippines and Sri Lanka, among others, to conclude an agreement on the protection of domestic workers' rights.

62. In Switzerland, the "whole of Government" approach to migration is based on an interdepartmental cooperation structure that brings together the various actors of the federal Government involved in migration to enable policy coherence on migration issues.

4. Accountability

63. Domestic work is often not monitored by competent bodies, and migrant domestic workers find it difficult to bring complaints and access legal remedies when their rights are violated. This can be due to various, often overlapping reasons, including unfamiliarity with national laws and judicial systems, unfamiliarity with local languages, inappropriate or inadequate legal assistance, lack of workplace inspections and restrictions on freedom of movement and expression.

64. It is an obligation of countries of origin to protect migrant domestic workers who are their nationals. The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has repeatedly reminded countries of origin that it is their duty to protect their nationals abroad, notably by providing effective consular services and mechanisms for receiving complaints from migrant workers.

65. As labour inspectors are unable to enter private homes in Lebanon, social workers have been appointed to monitor the conditions of domestic workers. Labour inspectors have been given specialized training courses to assist them in monitoring the implementation of laws and regulations concerning decent work, including for domestic workers.

66. In Peru, under the Ministry of Labour and Employment, labour inspectors are mandated to investigate domestic workplaces. Inspectors carried out 152 inspections with regard to domestic workers from April to December 2014.

67. In Ireland, the Domestic Workers Action Group, a non-governmental organization, collaborated with the trade union movement in 2010 to introduce labour inspections in private homes. Since that time, every employer obtaining an employment permit from the domestic work section is obliged to sign an authorization document that allows labour inspections in their premises.

68. In Malta, the Department for Industrial and Employment Relations receives complaints from migrant domestic workers with regard to non-payment of wages or other workplace violations. The Department is empowered to investigate such complaints and, if necessary, to initiate criminal proceedings against the employer.

69. In Qatar, the Ministry of Labour and Social Affairs monitors the work of the agencies that recruit domestic workers. It checks them regularly and carries out random inspections to ensure respect for the rights of domestic workers and the absence of exploitation. In 2012, 13 such recruitment agencies were shut down for non-compliance with the regulations of the ministry.

70. The Ministry of Labour in Argentina operates a tripartite commission for equal opportunities between men and women in the workplace to deal with complaints regarding the violations of labour rights, with special emphasis on those that affect women, in particular women migrants. Awareness seminars and workshops on the subject have also been developed with the participation of different social actors and migrant communities.

71. In Lebanon, the Ministry of Labour has set up a hotline to receive complaints directly from migrant domestic workers.

72. In Spain, women migrants in undocumented situations who are victims of physical violence have access to emergency accommodation and police protection as soon as they lodge a complaint. For instance, the Madrid city council operates a care service for domestic violence, a specialized intervention model for survivors of gender-based violence, which operates within municipal social services and which is open 24 hours a day, 365 days a year. With a free phone service, the care service provides immediate assistance, legal information and support, psychological help and emergency short-stay accommodation. The service, which is staffed by a multidisciplinary team of police and gender-based violence specialists, coordinates with municipal and privately run support services in the city.

73. Since 2013, the United Nations Office on Drugs and Crime has supported a series of national training workshops for diplomatic and consular personnel of the Governments of Indonesia and the Philippines in order to facilitate the identification of potential victims of trafficking in persons among Filipino and Indonesian migrant domestic workers who wish to seek consular assistance in relation to exploitative working conditions.

5. Improving the evidence base

74. It is necessary to generate appropriate knowledge about domestic work and domestic workers in countries of origin and destination and to assist States and other stakeholders in developing and implementing human rights-based policies, programmes and other measures related to migrant domestic workers. In addition, lack of appropriate data and data-capturing capacity makes it difficult to determine the number of workers in the sector and under which labour regimes they fall.

75. In Nepal, local research institutions, in partnership with international organizations, undertook a situational and policy analysis of Nepali women migrant workers, including domestic workers. The evidence generated by that initiative contributed to the decision to lift the ban on Nepali women migrant workers, including domestic workers, migrating to the countries of the Gulf and also

contributed to the adoption by the Government of Nepal of the Foreign Employment Act (2007), which includes gender-sensitive provisions.

76. In 2013 a study commissioned by the International Organization for Migration, under the United Nations Joint Programme to Address Violence Against Women, interviewed 101 women migrants who returned to Bangladesh between March and May 2013 in order to improve its response to the issue of violence against women migrant workers.

77. The national equality body of Italy publishes an annual migration report tracking the situation of migrants in Italy through statistical data on residence, inclusion in the labour market and society and non-discrimination.

78. In Peru, since 2005, the national institute of statistics and the national office of migration, in collaboration with other ministries, including the Ministry of Foreign Affairs, have published an annual statistical compendium on statistics for the international migration of Peruvians and the immigration of foreigners, including the national census, household surveys and administrative records as sources of information.

IV. Recommendations

79. **The Secretary-General welcomes the information received from Member States, including information concerning legislation, regulations and policies to strengthen the protection of the human rights of migrant domestic workers, and, in that regard:**

(a) **Underlines that States have an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality or legal status;**

(b) **Encourages States to ratify all relevant international human rights instruments and international labour rights instruments, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as the Domestic Workers Convention, 2011 (No. 189) of ILO;**

(c) **Encourages States to ensure that all migrant domestic workers are able to enjoy their right to decent work and to just and favourable conditions of work without any derogation, even in private contracts;**

(d) **Calls upon States to combat and sanction xenophobia, racism and discrimination against migrant domestic workers, including on the basis of gender;**

(e) **Encourages States to ensure that all migrant domestic workers have access to remedies, including in cases of violence and/or physical, mental or sexual abuse by employers, failure to pay wages and unlawful dismissal, and to ensure that employers are not able to abuse the rights of migrant domestic workers with impunity;**

(f) **Calls upon States to take proactive positive measures to avoid the marginalization and social exclusion of migrant domestic workers: migrants**

should be empowered to exercise their right to freedom of association, including through forming or joining trade unions as well as informal networks and associations;

(g) Encourages States to ensure that all migrant domestic workers, regardless of their legal status, have access to adequate health care and to protect their access to the underlying determinants of health;

(h) Calls upon States to ensure that all migrant domestic workers are able to enjoy their rights to adequate housing and to live in security, peace and dignity, and, at a minimum, to ensure that migrant domestic workers are not forced to live in housing conditions that are inhuman or degrading and contrary to human dignity;

(i) Recommends the urgent development of relevant, valid and reliable information on migration for domestic work from a human rights perspective, including through the collection of data disaggregated on the basis of sex, age and legal status, while ensuring that such data-collection activities are in accordance with international standards on data protection and the right to privacy;

(j) Encourages States to include information in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrant domestic workers.